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2 UNITED STATES DISTRICT COURT
3
4 DISTRICT OF NEVADA
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6 BRIAN BEST,

7 Plaintiff,

8 vs.

9 MEREDITH BERESFORD, *et al.*,
10 Defendants.
11

Case No.: 3:18-CV-00554-RCJ-WGC

ORDER ADOPTING AND ACCEPTING
REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE
(ECF NO. 3)

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13 Before the Court is the Report and Recommendation of United States Magistrate
14 Judge (ECF No. 3¹) entered on February 27, 2019, recommending that the Court grant
15 Plaintiff's Application to Proceed in Forma Pauperis (ECF No. 1); the Complaint (ECF
16 No. 1-1) be filed; and that some claims be dismissed with prejudice while others be
17 dismissed without prejudice and with leave to amend. On March 18, 2019, Plaintiff filed
18 his Objections to Magistrate Judge's Report and Recommendation (ECF Nos. 4 and 5).
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20 This action was referred to Magistrate Judge Cobb under 28 U.S.C. §
21 636(b)(1)(B) and Local Rule IB 1-4 of the Rules of Practice of the United States District
22 Court for the District of Nevada.
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24 The Court has conducted its *de novo* review in this case, has fully considered the
25 pleadings and memoranda of the parties including the parties' objections to the Report
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1 Refers to Court's docket number.

1 and Recommendation and other relevant matters to 28 U.S.C. § 636(b)(1)(B) and Local
2 Rule IB 3-2.

3 IT IS HEREBY ORDERED that United States Magistrate Judge Cobb's Report
4 and Recommendation (ECF No. 3), shall be ADOPTED and ACCEPTED.
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6 IT IS FURTHER ORDERED that Plaintiff's IFP application (ECF No.1) is
7 GRANTED.

8 IT IS FURTHER ORDERED That the Complaint (ECF No. 1-1) shall be filed.

9 IT IS FURTHER ORDERED that Plaintiff's Fourth Amendment claims against
10 Meredith Beresford are DISMISSED WITH PREJUDICE to the extent they rely on
11 conduct undertaken by Beresford that was intimately associated with the judicial phase
12 of the criminal case. Plaintiff is given LEAVE TO AMEND, however, insofar as he may
13 be able to state Fourth Amendment claims against Beresford for which she does not
14 have absolute immunity. To the extent Plaintiff implicates Judge Tatro in his Fourth
15 Amendment claims he will be DISMISSED WITH PREJUDICE.
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18 IT IS FURTHER ORDERED that Plaintiff's witness tampering claim against
19 Hatley is DISMISSED WITH LEAVE TO AMEND.
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21 IT IS FURTHER ORDERED that the malicious prosecution claims are
22 DISMISSED WITHOUT PREJUDICE as they have not yet accrued. They may be
23 refiled once the conviction is invalidated. To the extent the malicious prosecution claims
24 are asserted against Beresford based on allegations of conduct that was intimately
25 associated with the judicial phase of the criminal process (such as filing the criminal
26 complaint, bringing charges, and negotiating a plea), they will be DISMISSED WITH
27 PREJUDICE as Beresford is entitled to absolute immunity as to those claims.
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1 IT IS FURTHER ORDERED that the libel claim is DISMISSED WITH
2 PREJUDICE.

3 IT IS FURTHER ORDERED that the abuse of process claim is DISMISSED,
4 WITH LEAVE TO AMEND.

5 IT IS FURTHER ORDERED that the perjury claim against Beresford is
6 DISMISSED WITH PREJUDICE.

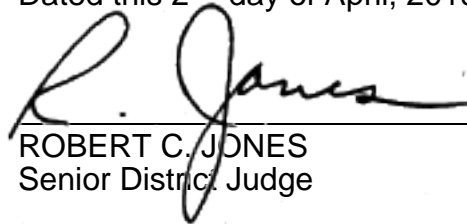
7 IT IS FURTHER ORDERED that Plaintiff's negligence claim is DISMISSED
8 WITH LEAVE TO AMEND.

9 IT IS FURTHER ORDERED that Plaintiff may file an AMENDED COMPLAINT
10 within 30 days from entry of this order, or on or before MAY 2, 2019.

11 IT IS SO ORDERED.

12 Dated this 2ND day of April, 2019.

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ROBERT C. JONES
Senior District Judge